Special Education Goes to the Supreme Court: Analysis and Impact of Endrew F. and Fry

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2017 Supreme Court Decisions

Two special education cases for the first time since 1982:

• **Endrew F. v. Douglass County School District**
  - Argued on January 11, 2017
  - Judgment vacated and case remanded on March 22, 2017
  - Chief Justice Roberts delivered the opinion

• **Fry v. Napoleon Community Schools**
  - Argued on October 31, 2016
  - Judgment vacated and remanded on February 22, 2017
  - Justice Kagan delivered the opinion
Endrew F. v. Douglas County School District

The Origins of IDEA & FAPE

- **1975 Education for All Handicapped Children (EHA)**
  In response to 2 federal cases:
  - PARC v. Commonwealth
  - Mills v. Board of Ed. of D.C.

- **1986 EHA**
  Amended to provide programs/services to children from birth

- **1990 Individuals with Disabilities in Education Act (IDEA)**
  EHA amended and renamed

- **1997 IDEA Amendments**
  Emphasized transition services for students with disabilities

- **2004 Individuals with Disabilities Education Improvement Act of 2004**
  Emphasizes enhanced accountability and brought IDEA in line with No Child Left Behind Act
The Origins of IDEA & FAPE

The IDEA can be broken down into 6 main principles:

• Free Appropriate Public Education (FAPE)
• Child Find
• Individualized Education Plan (IEP)
• Least Restrictive Environment (LRE)
• Parent and Student Participation
• Procedural Safeguards

The Origins of IDEA & FAPE

FAPE is defined by IDEA but not described
The law lacked a tangible description of what FAPE should look like in practice

A new approach to FAPE
• Board of Ed. of the Hendrick Hudson Central School District v. Rowley
  ▪ The lower courts found that the disparity between the student’s achievement and her potential reflected a failure to provide her with FAPE.
  ▪ The courts further defined FAPE as “an opportunity to achieve [the student’s] full potential commensurate with the opportunity provided to other children.”
The Origins of IDEA & FAPE

Board of Ed. of the Hendrick Hudson Central School District v. Rowley (cont.)

In its review, the Supreme Court looked at two questions:

1. What is meant by the EHA’s requirement of FAPE?
2. What is the role of the state and federal courts in exercising the review granted by the EHA’s procedural safeguards?

**Answer:** According the Court, the EHA provided a “basic floor of opportunity” to students with disabilities, and basically any benefit would satisfy the EHA’s requirements.

The Supreme Court then added a twofold analysis for a court’s inquiry under the IDEA:

1. Has the State complied with the procedures in IDEA?
2. Is the IEP reasonably calculated to enable the child to receive educational benefits?

If these requirements are met, the State has complied with its obligations, and the courts can require no more.

**Remaining Question**

What exactly is required for IEP’s?

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The Years Between *Rowley* and *Endrew F.*

What does “some benefit” mean to the courts?

A split developed between the Circuits regarding the meaning of FAPE.

**Raising the Rowley standard**

- First, Second, Third, Fourth and Sixth Circuits
  - Requires “meaningful” access to education to satisfy FAPE.
- Fifth Circuit
  - Requires “meaningful” access to education and “progress” to satisfy FAPE.
- Seventh and Eighth Circuits
  - Already explicitly required “progress” as a component of an adequate IEP.
- Eleventh Circuit
  - Requires “adequate educational benefit based on surrounding and supporting facts” and the “child’s individual needs.”

**Maintaining the Rowley standard**

- Ninth, Tenth, and D.C. Circuits
  - Had declined to raise the Rowley standard to include progress or meaningful access to education.
Endrew F. v. Douglas County School District

Facts

• Student with autism.

• Attended public school district from pre-school through fourth grade.

• When it came time to plan for Endrew’s fifth grade year, Endrew’s parents rejected the proposed IEP and unilaterally placed Endrew in a private school.

• About 2 years after Endrew was unilaterally placed, his parents filed for a complaint with the Colorado Department of Education seeking reimbursement for Endrew’s tuition.

• Endrew’s parents argued that the proposed IEP was insufficient given the fact that it was nearly identical to the IEP for fourth grade; Endrew’s parents also cited severe behavioral deterioration.

Endrew F. v. Douglas County School District

Procedural History

• Due Process Hearing: The hearing officer ruled in favor of the District on the basis that Endrew had been provided with FAPE because he received “some” education benefit at Douglas County Schools.

• The district court upheld the hearing officer’s decision, noting that Endrew exhibited progress, albeit minimal, on his IEP goals and as a result he had been provided with FAPE.

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Endrew F. v. Douglas County School District

Positions of the Parties in front of SCOTUS

• Parents’ position: “FAPE is ‘an education that aims to provide a child with a disability opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities.’”

• District’s position: de minimis standard.

Endrew F. v. Douglas County School District

SCOTUS Decision

• The Supreme Court rejected the “de minimis” standard and held “to meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”
Endrew F. v. Douglas County School District

SCOTUS Decision Continued

- The Court states that “The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.”

Endrew F. v. Douglas County School District

How will courts interpret the Endrew F. standard?

An example of a Pre Endrew F case from the 7th Circuit (Illinois)

Alex R. ex rel. Beth R. v. Forrestville Community Unit School District No. 221

- The district had responded to Alex’s rapid behavioral deterioration consistently and in a way that appeared “reasonably likely to produce progress.”
- Alex had showed sufficient progress in his earlier school years which demonstrated that his IEP’s were “reasonably calculated to enable the child to receive educational benefits.”
- Therefore, the requisite degree of reasonable progress varies depending upon an individual student’s abilities.
- Objective factors, such as regular advancement from grade to grade and achievement of passing grades are usually enough to show satisfactory progress under an IEP plan and thus are enough to show that the IEP was calculated to confer an educational benefit.
Endrew F. v. Douglas County School District

How will courts interpret the Endrew F. standard?

Examples of a Post Endrew F cases

D.B. v. Ithaca City School District
2nd Circuit – May 23, 2017

- The court found the IEP was substantially adequate because it was “sufficiently tailored to her needs to ensure meaningful progress,” thus in compliance with Endrew F.
- The school provided multiple assessments in the development of the IEP, and the IEP discussed the findings which rendered the program as “specifically designed” to address the student’s deficits.

M.C. v. Antelope Valley Union High School District
9th Circuit – May 30, 2017

- Case was remanded to the District Court to consider the plaintiff’s claims in light of Endrew F.
- Court found that “the school must implement an IEP that is ‘reasonably calculated to remediate and, if appropriate, accommodate the child’s disabilities so that the child can make progress in the general education curriculum,’ taking into account the progress of his non-disabled peers and the child’s potential.”
Endrew F. v. Douglas County School District

Impact of Endrew F.

- Varies depending on your Circuit.

- Regardless of the Circuit, the key takeaway is the significance of training all requisite school staff on the requirements of FAPE.

- SCOTUS maintained the fact that “deference is based on the application and expertise and the exercise of judgment by school authorities.”

Endrew F. v. Douglas County School District

Guidance for School Districts

Best Practices to Ensure IEP’s are Tailored to the “Progress” Standard

- PLAAFP’s: they specifically and accurately describe a student’s present levels of achievement, including the student’s strengths and how the child’s disability affects his/her access to the general education curriculum.

- GOALS: they must be written to allow clear measurability; SMART goals. Clearly delineate the expected outcome and the timeframe in which the outcome is expected to occur.

- MEASUREMENT CRITERIA: ensure that they logically align with strategies and expectations outlined in the goals.

- PROGRESS MONITORING: hard evidence of detailed progress should be tracked and maintained consistently in order to adjust a student’s educational program as necessary. Progress monitoring should also be tracked for accommodations and modifications in each area described in the IEP.
Endrew F. v. Douglas County School District

Guidance for School Districts
Best Practices to Ensure IEP's are Tailored to the “Progress” Standard

• **IEP REVISIONS:** if a student is not making progress during the school year, the IEP team must reconvene to determine the obstacles; goals, related services, accommodations, and modifications should be reviewed and adjusted to ensure progress. Be proactive and be prepared to troubleshoot a student’s lack of progress.

• **IEP TEAM MEMBERS:** ensure that all team members are implementing the IEP as required.
  - General Education teachers should provide A/M’s in the GenEd setting as outlined in the IEP
  - Paraprofessionals assigned to a student per the IEP contribute to the IEP development and progress monitoring
  - Behavior Intervention Plans should be disseminated to school staff members who regularly interact with the student.

• **PARENT PARTICIPATION:** welcome and discuss parent concerns; capture discussions in the IEP notes.

Endrew F. v. Douglas County School District

More Practical Tips for School Districts from a “Progress-based” Perspective

• Be able to explain exactly how the IEP will enable the student to make progress.
• Be prepared and anticipate parent questions and concerns.
• Be clear. Try to avoid educator “lingo” and acronyms.
• Be thorough.
• Be thoughtful and empathetic.
• Have the necessary paperwork ready and at hand.
• Consider the student’s unique needs.
• Do not repeat and recycle goals.
• Scaffold goals over time utilizing specific strategies and interventions.
• Think long-term.
**Fry v. Napoleon Community Schools**

What services and what level of services are required for a student? A common disagreement between parents and schools.

**1984 Smith v. Robinson**
- Parents sought rewards for attorneys fees and other relief for claims brought under the Rehabilitation Act, §§ 1983 and 1988
- School District argued that the parents were trying to circumvent the procedural bars to attorneys fees under the EHA by filing additional claims under the Rehabilitation Act.
- Court held that that the EHA was the sole avenue for relief under claims brought against a public educational body regarding students with disabilities.

Congress responds to Smith: IDEA 2004
- EHA amended to provide that children still have remedies under the ADA, Rehabilitation Act, and other federal laws, however, if parents also seek remedy under the IDEA, they must exhaust all avenues of relief per the IDEA before seeking relief under other federal laws.

The IDEA roadmap to comply with its exhaustion requirements
- Claims regarding a denial of FAPE:
  - File complaint with the LEA or SEA – triggers a preliminary meeting between parents and school
  - Proceed to mediation if no agreement is reached
  - Proceed to a request for a due process hearing
  - If the parents have properly sought relief through these avenues, they may seek judicial review
Fry v. Napoleon Community Schools

Facts

• Ehlena is a student with severe cerebral palsy.

• The District refused to allow Ehlena to bring her service dog, Wonder, to school; the District rationalized that it was already providing her with a 1:1 (human) aide pursuant to her IEP.
Parents filed an OCR complaint in response to the District’s refusal. In the meantime, the Parents enrolled their student at another school district.

OCR found in favor of the family. OCR compared the student’s need for her dog to a blind person needing a seeing eye dog.

Parents decided not to re-enroll Ehlena, fearing retribution. Instead, they filed a federal lawsuit claiming discrimination.

**Fry v. Napoleon Community Schools**

Procedural History

- The Frys brought a lawsuit against the District for violations of Section 504 and the ADA.
- The district court dismissed the suit due to the Frys’ failure to exhaust their administrative remedies under IDEA.
- The lack of an expressly stated IDEA claim was “irrelevant” because the IDEA was implicated enough to trigger the exhaustion requirements.
Procedural History

• The 6th Circuit affirmed the dismissal.
  ▫ The 6th Circuit found that because the damages related “to the specific educational purpose of the IDEA” and because IDEA could have remedied these harms, the exhaustion requirements of IDEA were triggered.

• The Fry’s appealed to the Supreme Court.

Fry v. Napoleon Community Schools

SCOTUS Decision

• If the core of the plaintiff’s claim is the denial of FAPE, then exhaustion of IDEA’s administrative remedies is required.

• A court should look to the substance, or gravamen, of the complaint to determine whether a suit seeks relief for a denial of FAPE per the IDEA.
**Fry v. Napoleon Community Schools**

**SCOTUS Decision**

- Guidance questions:
  1. Could a student bring a similar claim outside of the school environment?
  2. Could an adult (e.g., an employee), have brought the same claim against the district?

If “yes” to both, the claims are likely not implicating IDEA.

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**Fry v. Napoleon Community Schools**

**SCOTUS Decision**

- While the 6th Circuit had reasoned that the value of allowing Wonder added to E.F.’s sense of her independence and social confidence, the Supreme Court found this was not the same as asking whether the gravamen of E.F.’s complaint charges, and seeks relief for, the denial of FAPE.

- Case was remanded back to the 6th Circuit for a determination of whether E.F.’s complaint implicated FAPE under IDEA.
Fry v. Napoleon Community Schools

Cases Interpreting Fry

J.M. v. Francis Howell School District
8th Circuit – March 7, 2017

• 8th Circuit applied the new Fry analysis and upheld the lower court’s dismissal of claims for failure to exhaust administrative remedies.
• Parent stated that she was not seeking relief under IDEA
• The essential question before the court involved a denial of FAPE, thus the parent was required to exhaust remedies under the IDEA.

Fry v. Napoleon Community Schools

Cases Interpreting Fry

J.P. v. Williamson County Education Services
S.D. Illinois – June 26, 2017

• Original complaint: 32 pages, 14 separate legal claims, over 182 paragraphs.
• Court could not tell from the pleading whether exhaustion was required. It granted a motion to dismiss but provided Plaintiffs leave to file an Amended Complaint with an emphasis on a short and plain statement that shows a need for relief.
**Fry v. Napoleon Community Schools**

**Likely Impact of Fry**

- Increases likelihood of litigation regarding cases brought on behalf of students with disabilities

- A savvy parent attorney may craft complaints that complain of IDEA related issues, but present them to a federal court under the ADA or other law to pursue attorney’s fees.

- The Court did not address the question of whether exhaustion is required when the plaintiff complains of a denial of FAPE, but the specific remedy requested is not one that an IDEA hearing officer may award.

**Fry v. Napoleon Community Schools**

**Practical Tips and Guidance for School Districts**

- Build a relationship with parents

- Manage disputes at the LEA level as much as possible.

- Consult with legal counsel to ensure that settlement agreements are appropriately drafted to prevent claims from being filed in federal court later

- Fry increases the importance of good “lawyering” and good lawyers

- Review district policies on service animals
Conclusion
Questions
Discussion

Thank You!

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